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Public Hearing before the Joint Committee on Government Administration and Elections

Raised Bill No. 284: An Act Creating a Division of Administrative Hearings

Senator Slossberg, Representative Spallone and members of the Government Administration and Elections Committee, thank you for the opportunity, on behalf of the human rights referees at the Commission on Human Rights and Opportunities (CHRO), to submit written testimony on Senate Bill 284, An Act Creating a Division of Administrative Hearings. We would like to raise five points of interest for your consideration.

First, the human rights referees support consolidating administrative hearings into a centralized hearing office, such as the Division of Administrative Hearings. As demonstrated by the success of a centralized office in nearly thirty other states, through the use of full-time, experienced and trained hearing officers, a centralized hearing office can: (1) ensure impartial administration and conduct of hearings of contested cases; (2) ensure greater uniformity and consistency in the application of the Uniform Administrative Procedure Act by state agencies; (3) facilitate and enhance public trust and confidence in the exercise of regulatory and disciplinary powers conferred upon agencies and boards; and (4) achieve long term costs savings.

Second, the human rights referees support the inclusion of all the referees in such a Division of Administrative Hearings, as provided for in section 4 of this bill. Since the creation of the full-time human rights referee system with the enactment of P.A. 98-245, we have developed expertise in procedural due process and the complex field of discrimination law. We have extensive experience in research and in writing comprehensive rulings and decisions. Similar to judges, we have also attended seminars in judicial writing presented by judicial department staff. Further, in recognition of our knowledge and skills, in 2002, the legislature expanded our jurisdiction beyond discrimination cases to include "whistleblower retaliation" cases brought under General Statues § 4-61dd.

Third, the human rights referees oppose the use of part-time judge trial referees in a Division of Administrative Hearings, an idea that circulated in the 2009 legislative session. We contacted the leadership of the National Association of Administrative Law

Judiciary (NAALJ) and our inquiry was forwarded to member states throughout the country. We had direct responses from national leadership, individually representing the states of New York, Florida, California and Washington, including a past president and current incoming president of NAALJ. None were aware of the use of retired (judicial branch) judges in an administrative adjudicatory function, either in their respective states or anywhere else in the country. All saw problems with the concept, from ethical to separation of powers concerns. The NAALJ president elect (California) even pointed out the difference in skill sets between judicial branch judges and executive branch administrative law judges.

Fourth, the human rights referees defer to the executive director of CHRO whether the centralized hearing office should be a division within CHRO.

Fifth, if the legislature determines that the public would be better served by a central hearing office that is an independent executive agency, attached for your consideration is a proposal for an independent Office of Administrative Hearings that we had previously submitted to the Commission on Enhanced Agency Outcomes.

Thank you for your consideration.

Proposal for

AN ACT ESTABLISHING AN OFFICE OF ADMINISTRATIVE HEARINGS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective July 1, 2010*) There shall be within the executive department an Office of Administrative Hearings to impartially administer and conduct hearings of contested cases in accordance with the provisions of sections 1 to 9, inclusive, and 20 of this act and chapter 54 of the general statutes.

Sec. 2. (NEW) (*Effective July 1, 2010*) (a) For purposes of this act, (1) "administrative law adjudicator" means a person whose primary duties are to conduct hearings in contested cases and issue final decisions or proposed final decisions and who is transferred to the Office of Administrative Hearings pursuant to section 4 of this act or appointed by the Chief Administrative Law Adjudicator pursuant to chapter 67 of the general statutes, (2) "Chief Administrative Law Adjudicator" means the Chief Administrative Law Adjudicator selected in accordance with this section and (3) "contested case" means a proceeding conducted in accordance with Chapter 54 of the general statutes.

(b) (1) The Governor shall nominate an administrative law adjudicator to serve as the Chief Administrative Law Adjudicator for a term expiring on March 1, 2011. (2) Thereafter, the Governor shall nominate an administrative law adjudicator to serve as Chief Administrative Law Adjudicator for a four-year term or until a successor has qualified. To be eligible for nomination, the Chief Administrative Law Adjudicator shall have been admitted to the practice of law in this state for at least ten years and shall be knowledgeable on the subject of administrative law. Pursuant to section 5-248 (f) of the general statutes, an administrative law adjudicator appointed to serve as Chief Administrative Law Adjudicator pursuant to this section and who thereafter is ready to report to duty to the position of administrative law adjudicator shall return to the position of administrative law adjudicator with all the rights and obligations pursuant thereto.

(c) Each nomination made by the Governor to the General Assembly for Chief Administrative Law Adjudicator shall be referred, without debate, to the committee on the judiciary, which shall report thereon within thirty legislative days from the time of reference, but no later than seven legislative days before the adjourning of the General Assembly. Each appointment by the General Assembly of a Chief Administrative Law Adjudicator shall be by concurrent resolution. The action on the passage of each such resolution in the House of Representatives and in the Senate shall be by vote taken on

the electrical roll-call device. No resolution shall contain the name of more than one nominee. The Governor shall, within five days after the Governor has notice that any nomination for a Chief Administrative Law Adjudicator made by the Governor has failed to be approved by the affirmative concurrent action of both houses of the General Assembly, make another nomination to such office.

(d) Notwithstanding the provisions of section 4-19 of the general statutes, no vacancy in the position of Chief Administrative Law Adjudicator shall be filled by the Governor when the General Assembly is not in session unless, prior to such filling, the Governor submits the name of the proposed vacancy appointee to the committee on the judiciary. Within forty-five days, the committee on the judiciary may, upon the call of either chairperson, hold a special meeting for the purpose of approving or disapproving such proposed vacancy appointee by majority vote. The Governor shall not administer the oath of office to such proposed vacancy appointee until the committee has approved such proposed vacancy appointee. If the committee determines that it cannot complete its investigation and act on such proposed vacancy appointee within such forty-five-day period, the committee may extend such period by an additional fifteen days. The committee shall notify the Governor in writing of any such extension. Failure of the committee to act on such proposed vacancy appointee within such forty-five-day period or any fifteen-day extension period shall be deemed to be an approval.

(e) The Chief Administrative Law Adjudicator shall take the oath of office provided in section 1-25 of the general statutes prior to commencing his or her duties, shall devote full time to the duties of the office of Chief Administrative Law Adjudicator and shall not engage in the private practice of law. The Chief Administrative Law Adjudicator shall be eligible for renomination.

(f) The Chief Administrative Law Adjudicator may be removed during his or her term in accordance with the provisions of section 4-12 of the general statutes.

(g) The Chief Administrative Law Adjudicator shall be exempt from the classified service.

(h) The Chief Administrative Law Adjudicator, administrative law adjudicators, assistants and other employees of the Office of Administrative Hearings shall be entitled to the fringe benefits applicable to other state employees, shall be included under the provisions of chapters 65 and 66 of the general statutes regarding disability and retirement of state employees, and shall receive full retirement credit for each year or portion thereof for which retirement benefits are paid for service as such Chief Administrative Law Adjudicator, administrative law adjudicator, assistant or other employee.

Sec. 3. (NEW) (*Effective July 1, 2010*) The Chief Administrative Law Adjudicator shall be the chief executive officer of the Office of Administrative Hearings and shall:

(1) Have all of the powers specifically granted in the general statutes and any additional powers that are reasonable and necessary to enable the Chief Administrative Law Adjudicator to carry out the duties of his or her office, including, but not limited to, the powers and duties specified in section 4-8 of the general statutes;

(2) Assign administrative law adjudicators in all cases referred to the Office of Administrative Hearings, provided, in assigning an administrative law adjudicator to a case, the Chief Administrative Law Adjudicator shall, whenever practicable, assign an administrative law adjudicator who has expertise in the legal issues or general subject matter of the proceeding;

(3) Have all the powers and duties of an administrative law adjudicator;

(4) Prepare an edited version of a proposed final decision and final decision that shall not disclose protected information in any case where any provision of the general statutes, federal law, state or federal regulations, or an order of a court of competent jurisdiction bars the disclosure of the identity of any person or party or bars the disclosure of any other information;

(5) Collect, compile and prepare statistics and other data with respect to the operations of the Office of Administrative Hearings and submit annually to the Governor and the General Assembly a report on such operations, including, but not limited to, the number of hearings initiated, the number of proposed final decisions rendered, the number of partial or total reversals of such decisions by the agencies, the number of final decisions rendered and the number of proceedings pending;

(6) Study the subject of administrative adjudication in all its aspects and develop recommendations to promote the goals of impartiality, fairness, uniformity and cost-effectiveness in the administration and conduct of hearings of contested cases;

(7) Adopt regulations, in accordance with chapter 54 of the general statutes, to carry out the provisions of sections 1 to 10, inclusive, and 22 of this act and sections 4-176e to 4-181a, inclusive, of the general statutes, as amended by this act, and the policies of the Office of Administrative Hearings in connection therewith. Such regulations, with respect to contested cases heard by said office, shall supersede any inconsistent agency regulations, policies or procedures, except those provisions mandated by the general statutes or federal law, and shall include, but not be limited to, standards related to time limits for agency action in contested cases pursuant to applicable provisions of the general statutes, and standards for the giving of notices of hearings, for the scheduling of hearings and for the assignment of administrative law adjudicators;

(8) Develop a program for the continuing education of administrative law adjudicators in procedural due process and in the substantive law of the agencies that are subject to

the provisions of section 8 of this act and training for ancillary personnel, and implement such program; and

(9) Index, by name and subject, all written orders and final decisions and make all indices, proposed final decisions and final decisions available for public inspection, and copying electronically and to the extent required by the Freedom of Information Act, as defined in section 1-200 of the general statutes.

Sec. 4. (NEW) (*Effective October 1, 2010*) (a) Notwithstanding any provision of the general statutes, each full-time employee or permanent part-time employee of an agency subject to the provisions of section 8 of this act whose primary duties (1) are to conduct hearings in contested cases and issue final decisions or proposed final decisions, or (2) relate to providing administrative services required for conducting such hearings and issuing such decisions, shall be transferred to the Office of Administrative Hearings, in accordance with the provisions of this section and sections 4-38d, 4-38e and 4-39 of the general statutes.

(b) Persons transferred to the Office of Administrative Hearings pursuant to this section and persons appointed by the Chief Administrative Law Adjudicator pursuant to chapter 67 of the general statutes shall be in the classified service, shall be represented by the collective bargaining representative of an employee organization, as defined in section 5-270 of the general statutes, and shall be subject to the provisions of chapter 68 of the general statutes. Persons transferred to the Office of Administrative Hearings pursuant to this section who are members of an employee organization at the time of their transfer shall continue to be represented by such employee organization.

(c) The salaries, seniority and benefits of persons transferred to the Office of Administrative Hearings pursuant to this section shall not be reduced as a result of the transfer.

(d) No promotions governed by any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees shall be denied, delayed, impaired or eliminated by the implementation of sections 1 to 10, inclusive, of this act.

(e) (1) Persons transferred to the Office of Administrative Hearings pursuant to this section who are members of a collective bargaining unit at the time of their transfer shall (A) not lose the job classification they had at the time of their transfer as a result of the transfer, and (B) remain the beneficiaries of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees. The rights and obligations contained in any memorandum of understanding that applies to staff attorneys shall apply to administrative law adjudicators transferred to the Office of Administrative Hearings and appointed by the Chief Administrative Law Adjudicator.

(2) Persons transferred to the Office of Administrative Hearings pursuant to this section who are not members of a collective bargaining unit at the time of their transfer, and persons appointed by the Chief Administrative Law Adjudicator, shall (A) have a job classification commensurate with persons who are members of a collective bargaining unit at the time of their transfer, and (B) be subject to and become the beneficiaries of the terms of any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees, including the rights and obligations contained in any memorandum of understanding that applies to staff attorneys. Persons transferred to the Office of Administrative Hearings pursuant to this section who are not members of a collective bargaining unit at the time of their transfer shall be assigned to the appropriate collective bargaining unit as determined by the Office of Labor Relations or other appropriate state agency.

(f) Time served in other agencies by persons transferred to the Office of Administrative Hearings pursuant to this section shall be recognized as qualifying experience and time served in the Office of Administrative Hearings shall count as successful and satisfactory performance for career progression under any existing and applicable memorandum of understanding between the Office of Labor Relations and any collective bargaining representative for state employees.

(g) An administrative law adjudicator, assistant or other employee of the Office of Administrative Hearings who is removed, suspended, demoted or subjected to disciplinary action or other adverse employment action may appeal such action in accordance with the applicable collective bargaining agreement.

Sec. 5. (NEW) (*Effective October 1, 2010*) (a) Each administrative law adjudicator shall have been admitted to the practice of law in this state for at least two years, except that such requirement shall not apply to any administrative law adjudicator transferred pursuant to section 4 of this act. Each administrative law adjudicator shall be knowledgeable on the subject of administrative law.

(b) An administrative law adjudicator shall have the powers granted to hearing officers and presiding officers pursuant to this act and chapter 54 of the general statutes.

Sec. 6. (NEW) (*Effective October 1, 2010*) All hearings in contested cases conducted by the Office of Administrative Hearings shall be conducted by an administrative law adjudicator assigned by the Chief Administrative Law Adjudicator and shall be conducted in accordance with this act and chapter 54 of the general statutes, as amended by this act.

Sec. 7. (NEW) (*Effective October 1, 2010*) An administrative law adjudicator may conduct hearings and settlement negotiations held by the Office of Administrative Hearings. If a contested case is not resolved through settlement, either party may

proceed to a hearing. An administrative law adjudicator who attempts to settle a matter may not thereafter be assigned to hear the matter. If a contested case is resolved by stipulation, agreed settlement or consent order, an administrative law adjudicator shall issue an order dismissing the contested case. The order shall incorporate by reference such stipulation, agreed settlement or consent order which shall be attached thereto. The order shall further provide that no findings of fact or conclusions of law have been made regarding any alleged violations of the law. The order and stipulation, agreed settlement or consent order may be enforceable by any party in the superior court for the judicial district of New Britain.

Sec. 8. (NEW) (*Effective October 1, 2010*) (a) Notwithstanding any provision of the general statutes, and except as otherwise provided in section 9 of this act, on and after the effective date of this section, the Office of Administrative Hearings shall conduct hearings and render proposed final decisions or, if authorized or required by law, final decisions in contested cases:

(1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of the general statutes;

(2) Brought by or before the Commission on Human Rights and Opportunities;

(3) Brought by or before the Department of Children and Families;

(4) Brought by or before the Department of Transportation;

(5) Brought by or before the Department of Motor Vehicles; and

(6) Brought by or before the Bureau of Firearms Permit Examiners.

(b) Any agency that is not required to refer contested cases to the Office of Administrative Hearings pursuant to this section may, with the consent of the Chief Administrative Law Adjudicator, refer any contested case brought by or before such agency, to the Office of Administrative Hearings for purposes of settlement or a full adjudication of the contested case by an administrative law adjudicator.

(c) The powers, functions and duties of conducting hearings and issuing decisions in contested cases enumerated in subsections (a) and (b) of this section shall, on the date specified in subsection (a) or the date of referral in subsection (b), be transferred to the Office of Administrative Hearings in accordance with the provisions of sections 4-38d, 4-38e and 4-39 of the general statutes.

(d) The Office of Administrative Hearings shall render final decisions for all cases brought (1) Pursuant to subdivision (3) of subsection (b) of section 4-61dd of the

general statutes and (2) Brought by or before the Commission on Human Rights and Opportunities.

(e) If the administrative law adjudicator issues a proposed final decision and the agency modifies the proposed final decision, the agency must identify the modifications and provide an explanation to the parties as to why the agency made the modification.

(f) If the administrative law adjudicator issues a proposed final decision and the agency modifies a finding of fact, in an appeal of a final decision by a party to the superior court, the superior court shall review the record. If the superior court decides that the administrative law adjudicator's finding of fact is supported by substantial evidence in the record, the court shall remand the matter to the agency for entry of an order consistent with the court's judgment.

(g) Any hearing officer under contract with an agency other than the Department of Motor Vehicles to conduct hearings and issue decisions in contested cases enumerated in subsection (a) of this section shall, on and after the date specified in subsection (a), continue to serve until all such cases assigned to such hearing officer are completed, unless the Chief Administrative Law Adjudicator determines that the case shall be reassigned to an administrative law adjudicator.

(h) Any hearing officer under contract with the Department of Motor Vehicles to conduct hearings and issue decisions in contested cases enumerated in subsection (a) of this section shall, on and after the date specified in subsection (a) continue to serve under contract with the Office of Administrative Hearings to conduct hearings brought by or before the Department of Motor Vehicles. Vacancies in such positions shall be filled by persons appointed by the Chief Administrative Law Adjudicator pursuant to chapter 67 of the general statutes. Persons appointed by the Chief Administrative Law Adjudicator to fill such vacancies shall be in the classified service, shall be represented by the collective bargaining representative of an employee organization, as defined in section 5-270 of the general statutes, and shall be subject to the provisions of chapter 68 of the general statutes.

(i) Nothing in this section shall be construed to apply to the State Board of Mediation and Arbitration or the State Board of Labor Relations.

(j) Agencies whose contested cases are conducted by the Office of Administrative Hearings, including but not limited to the Department of Children and Families, shall each execute any requisite contract with the Office of Administrative Hearings or other agency that is necessary to maintain and secure any federal or state funding or reimbursement.

Sec. 9. (NEW) (*Effective July 1, 2010*) No administrative law adjudicator may be assigned by the Chief Administrative Law Adjudicator to hear a contested case with respect to:

(1) Any hearing that is required by federal law to be conducted by a specific agency or other hearing authority; or

(2) Any matter where the head of the agency, or one or more of the members of a multimember agency, presides at the hearing in a contested case.

Sec. 10. Section 4-166 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

As used in this chapter and sections 1 to 9, inclusive, and section 21 of this act, unless the context otherwise requires:

(1) "Agency" means each state board, commission, department or officer authorized by law to make regulations or to determine contested cases, but does not include either house or any committee of the General Assembly, the courts, the Council on Probate Judicial Conduct, the Governor, Lieutenant Governor or Attorney General, or town or regional boards of education, or automobile dispute settlement panels established pursuant to section 42-181;

(2) "Contested case" means a proceeding, including but not restricted to rate-making, price fixing and licensing, in which the legal rights, duties or privileges of a party are required by state statute or regulation to be determined by an agency or by the Office of Administrative Hearings after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176, as amended by this act, hearings referred to in section 4-168 or hearings conducted by the Department of Correction or the Board of Pardons and Paroles;

(3) "Final decision" means (A) the [agency] determination in a contested case made pursuant to section 4-179, as amended by this act, section 21 of this act and section 4-180, as amended by this act, (B) a declaratory ruling issued by an agency pursuant to section 4-176, as amended by this act, or (C) [an agency] a decision made after reconsideration of a final decision. The term does not include a preliminary or intermediate ruling or order, [of an agency,] or a ruling [of an agency] granting or denying a petition for reconsideration;

(4) "Hearing officer" means an individual appointed by an agency to conduct a hearing in an agency proceeding that is not conducted by an administrative law adjudicator pursuant to section 8 of this act. Such individual may be a staff employee of the agency;

(5) "Intervenor" means a person, other than a party, granted status as an intervenor by an agency in accordance with the provisions of subsection (d) of section 4-176 or subsection (b) of section 4-177a, as amended by this act;

(6) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes;

(7) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license;

(8) "Party" means each person (A) whose legal rights, duties or privileges are required by statute to be determined by an agency proceeding and who is named or admitted as a party, (B) who is required by law to be a party in an agency proceeding, or (C) who is granted status as a party under subsection (a) of section 4-177a, as amended by this act;

(9) "Person" means any individual, partnership, corporation, limited liability company, association, governmental subdivision, agency or public or private organization of any character, but does not include the agency conducting the proceeding;

(10) "Presiding officer" means the head of the agency presiding at a hearing, the member of [an] a multimember agency or the hearing officer designated by the head of the agency to preside at [the] a hearing, or an administrative law adjudicator presiding at a hearing;

(11) "Proposed final decision" means a final decision proposed by an agency or a presiding officer under section 4-179, as amended by this act, or section 21 of this act;

(12) "Proposed regulation" means a proposal by an agency under the provisions of section 4-168 for a new regulation or for a change in, addition to or repeal of an existing regulation;

(13) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings issued pursuant to section 4-176, as amended by this act, or (C) intra-agency or interagency memoranda;

(14) "Regulation-making" means the process for formulation and adoption of a regulation;

(15) "Administrative law adjudicator" has the same meaning as provided in section 2 of this act; and

(16) "Head of the agency" means the individual or group of individuals constituting the highest authority within an agency.

Sec. 11. Subsection (g) of section 4-176 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(g) If the agency conducts a hearing in a proceeding for a declaratory ruling, the provisions of [subsection (b) of section 4-177c,] section 4-178, as amended by this act, and section 4-179, as amended by this act, shall apply to the hearing.

Sec. 12. Section 4-176e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

Except as otherwise required by the general statutes, a [hearing in an agency proceeding may be held before (1)] contested case shall be heard by (1) an administrative law adjudicator, (2) the head of the agency, (3) one or more of the members of a multimember agency, or (4) one or more hearing officers, provided no individual who has personally carried out the function of an investigator in a contested case may serve as a hearing officer in that case. [, or (2) one or more of the members of the agency.]

Sec. 13. Section 4-177 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice from the agency.

(b) The notice shall be in writing and shall include: (1) A statement of the time, place [,] and nature of the hearing or, if the contested case has been referred to the Office of Administrative Hearings, a statement that the matter has been referred to the Office of Administrative Hearings and that the time and place of the hearing will be set by an administrative law adjudicator; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and regulations involved; and (4) a short and plain statement of the matters asserted. If the agency or party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

(c) After an agency refers a contested case to the Office of Administrative Hearings, the agency shall certify the official record in such contested case to the Office of Administrative Hearings. The Office of Administrative Hearings shall issue a notice in

writing to all parties that shall include a statement of the time, place and nature of the hearing. Thereafter, a party shall file all documents that are to become part of such record with the Office of Administrative Hearings. The filing of such documents with the agency rather than with the Office of Administrative Hearings shall not be a jurisdictional defect and shall not be grounds for termination of the proceeding, provided the administrative law adjudicator may assess appropriate costs and sanctions against a party who misfiles such documents on a showing of prejudice resulting from a wilful misfiling. The Office of Administrative Hearings shall maintain the official record of a contested case referred to said office.

[(c)] (d) Unless precluded by law, a contested case may be resolved by stipulation, agreed settlement [,] or consent order or by the default of a party.

[(d)] (e) The record in a contested case shall include: (1) Written notices related to the case; (2) all petitions, pleadings, motions and intermediate rulings; (3) evidence received or considered; (4) questions and offers of proof, objections and rulings thereon; (5) the official transcript, if any, of proceedings relating to the case, or, if not transcribed, any recording or stenographic record of the proceedings; (6) proposed final decisions and exceptions thereto; and (7) the final decision.

[(e)] (f) Any recording or stenographic record of the proceedings shall be transcribed on request of any party. The requesting party shall pay the cost of such transcript, unless otherwise provided by law. Nothing in this section shall relieve an agency of its responsibility under section 4-183, as amended by this act, to transcribe the record for an appeal.

Sec. 14. Section 4-177a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) The presiding officer shall grant a person status as a party in a contested case if [that] such officer finds that: (1) Such person has submitted a written petition to the agency or presiding officer, and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's legal rights, duties or privileges shall be specifically affected by [the agency's] a decision in the contested case.

(b) The presiding officer may grant any person status as an intervenor in a contested case if [that] such officer finds that: (1) Such person has submitted a written petition to the agency or presiding officer, and mailed copies to all parties, at least five days before the date of hearing; and (2) the petition states facts that demonstrate that the petitioner's participation is in the interests of justice and will not impair the orderly conduct of the proceedings.

(c) The five-day requirement in subsections (a) and (b) of this section may be waived at any time before or after commencement of the hearing by the presiding officer on a showing of good cause.

(d) If a petition is granted pursuant to subsection (b) of this section, the presiding officer may limit the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition and shall define the intervenor's rights to inspect and copy records, physical evidence, papers and documents, to introduce evidence [,] and to argue and cross-examine on those issues. The presiding officer may further restrict the participation of an intervenor in the proceedings, including the rights to inspect and copy records, to introduce evidence and to cross-examine, so as to promote the orderly conduct of the proceedings.

Sec. 15. Section 4-177b of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

In a contested case, the presiding officer may administer oaths, take testimony under oath relative to the case, subpoena witnesses and require the production of records, physical evidence, papers and documents to any hearing held in the case. If any person disobeys the subpoena or, having appeared, refuses to answer any question put to [him] such person or to produce any records, physical evidence, papers and documents requested by the presiding officer, the administrative law adjudicator or, if the hearing is conducted by the agency, the agency may apply to the superior court for the judicial district of [Hartford] New Britain or for the judicial district in which the person resides, or to any judge of that court if it is not in session, setting forth the disobedience to the subpoena or refusal to answer or produce, and the court or judge shall cite the person to appear before the court or judge to show cause why the records, physical evidence, papers and documents should not be produced or why a question put to [him] such person should not be answered. Nothing in this section shall be construed to limit the authority of the agency, the administrative law adjudicator or any party as otherwise allowed by law.

Sec. 16. Section 4-177c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) In a contested case, each party and the agency, including an agency conducting the proceeding, shall be afforded the opportunity (1) to inspect and copy relevant and material records, papers and documents not in the possession of the party or such agency, except as otherwise provided by federal law or any other provision of the general statutes, and (2) at a hearing, to respond, to cross-examine other parties, intervenors [,] and witnesses, and to present evidence and argument on all issues involved.

(b) Persons not named as parties or intervenors may, in the discretion of the presiding officer, be given an opportunity to present oral or written statements. The presiding officer may require any such statement to be given under oath or affirmation.

Sec. 17. Section 4-178 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

In contested cases: (1) Any oral or documentary evidence may be received, but the [agency] presiding officer shall, as a matter of policy, provide for the exclusion of irrelevant, immaterial or unduly repetitious evidence; (2) [agencies shall give effect to] the rules of privilege recognized by law shall be given effect; (3) when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form; (4) documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, and upon request, parties and the agency, including an agency conducting the proceeding, shall be given an opportunity to compare the copy with the original; (5) a party and [such] the agency, including an agency conducting the proceeding, may conduct cross-examinations required for a full and true disclosure of the facts; (6) notice may be taken of judicially cognizable facts; [and of] (7) in a proceeding conducted by the agency or in an agency review of a proposed final decision, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge; [(7)] (8) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed; and [(8) the agency's] (9) in a proceeding conducted by the agency or in an agency review of a proposed final decision, the agency may use its experience, technical competence [,] and specialized knowledge [may be used] in the evaluation of the evidence.

Sec. 18. Section 4-178a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

If a hearing in a contested case or in a declaratory ruling proceeding is held before a hearing officer or before less than a majority of the members of the agency who are authorized by law to render a final decision, a party, if permitted by regulation and before rendition of the final decision, may request a review by a majority of the members of the agency, of any preliminary, procedural or evidentiary ruling made at the hearing. The majority of the members may make an appropriate order, including the reconvening of the hearing. The provisions of this section shall not apply to a hearing conducted by an administrative law adjudicator.

Sec. 19. Section 4-179 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) When, in an agency proceeding that is not conducted by an administrative law adjudicator, a majority of the members of the agency who are to render the final decision have not heard the matter or read the record, the decision, if adverse to a party, shall not be rendered until a proposed final decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the members of the agency who are to render the final decision.

(b) A proposed final decision made under this section shall be in writing and [contain a statement of the reasons for the decision and a finding of facts and conclusion of law on each issue of fact or law necessary to the decision] shall comply with the requirements of subsection (c) of section 4-180, as amended by this act.

(c) Except when authorized by law to render a final decision for an agency, a hearing officer shall, after hearing a matter, make a proposed final decision.

(d) The parties and the agency conducting the proceeding, by written stipulation, may waive compliance with this section.

Sec. 20. (NEW) (*Effective October 1, 2010*) (a) A proposed final decision rendered by an administrative law adjudicator shall be delivered promptly to each party or the party's authorized representative, and to the agency, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. After such proposed final decision is rendered, the record in the contested case shall be delivered promptly to the agency.

(b) A proposed final decision rendered by an administrative law adjudicator shall become a final decision of the agency unless the head of the agency, not later than twenty-one days following the date the proposed final decision is delivered or mailed to the agency, modifies or rejects the proposed final decision, provided the head of the agency may, before expiration of such time period and for good cause, certify the extension of such time period for not more than an additional twenty-one days. If the head of the agency modifies or rejects the proposed final decision, the head of the agency shall state the reason for the modification or rejection on the record. In reviewing a proposed final decision rendered by an administrative law adjudicator, the head of the agency may afford each party, including the agency, an opportunity to present briefs and may afford each party, including the agency, an opportunity to present oral argument.

(c) If, within the time period provided in subsection (b) of this section, the head of the agency, in reviewing a proposed final decision rendered by an administrative law adjudicator, determines that additional evidence is necessary, the head of the agency shall refer the matter to the Office of Administrative Hearings. The Chief Administrative Law Adjudicator shall assign the administrative law adjudicator who rendered such

proposed final decision to take the additional evidence unless such administrative law adjudicator is unavailable. After taking the additional evidence, the administrative law adjudicator shall, not later than thirty days following such referral, prepare a proposed final decision as provided in this section based on such additional evidence and the record of the prior hearing.

(d) A proposed final decision made under this section shall be in writing and shall comply with the requirements of subsection (c) of section 4-180 of the general statutes, as amended by this act.

Sec. 21. Section 4-180 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Each agency and administrative law adjudicator shall proceed with reasonable dispatch to conclude any matter pending before [it] such agency or administrative law adjudicator and, in all hearings of contested cases conducted by the agency or the administrative law adjudicator, shall render a final decision within ninety days following the close of evidence or the due date for the filing of briefs, whichever is later. [, in such proceedings.]

(b) If, in any contested case, any agency or administrative law adjudicator fails to comply with the provisions of subsection (a) of this section, [in any contested case, any party thereto] any party to such contested case may apply to the superior court for the judicial district of [Hartford] New Britain for an order requiring the agency or administrative law adjudicator to render a proposed final decision or a final decision forthwith. The court, after hearing, shall issue an appropriate order.

(c) A final decision in a contested case shall be in writing or, if there is no proposed final decision, orally stated on the record. [and, if adverse to a party,] A proposed final decision and a final decision in a contested case shall include [the agency's] findings of fact and conclusions of law necessary to [its] the decision and shall be made by applying all pertinent provisions of law. Findings of fact shall be based exclusively on the evidence in the record and on matters noticed. The [agency shall state in] proposed final decision and the final decision shall contain the name of each party and the most recent mailing address, provided to the agency, of the party or [his] the party's authorized representative. If the final decision is orally stated on the record, each such name and mailing address shall be included in the record.

(d) The final decision shall be delivered promptly to each party or [his] the party's authorized representative and, in the case of a final decision by an administrative law adjudicator authorized by law to render such decision, to the agency, personally or by United States mail, certified or registered, postage prepaid, return receipt requested. [The] An agency rendering a final decision shall immediately transmit a copy of such decision to the Office of Administrative Hearings. A proposed final decision that

becomes a final decision because of agency inaction, as provided in subsection (b) of section 21 of this act, shall become effective at the expiration of the time period specified in said subsection or on a later date specified in such proposed final decision. Any other final decision shall be effective when personally delivered or mailed or on a later date specified [by the agency] in such final decision. The date of delivery or mailing of a proposed final decision and a final decision shall be endorsed on the front of the decision or on a transmittal sheet included with the decision.

Sec. 22. Subsection (a) of section 4-181 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Unless required for the disposition of ex parte matters authorized by law, no hearing officer, administrative law adjudicator or member of an agency who, in a contested case, is to render a final decision or to make a proposed final decision shall communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or, in connection with any issue of law, with any party or the party's representative, without notice and opportunity for all parties to participate.

Sec. 23. Section 4-181a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) (1) Unless otherwise provided by law, a party or the agency in a contested case may, within fifteen days after the personal delivery or mailing of the final decision or within fifteen days after the date that a proposed final decision becomes a final decision because of agency inaction, as provided in subsection (b) of section 21 of this act, file with the [agency] authority that rendered the final decision a petition for reconsideration of the decision on the ground that: (A) An error of fact or law should be corrected; (B) new evidence has been discovered which materially affects the merits of the case and which for good reasons was not presented in the agency proceeding; or (C) other good cause for reconsideration has been shown. Within twenty-five days of the filing of the petition, [the agency] such authority shall decide whether to reconsider the final decision. The failure of [the agency] such authority to make [that] such determination within twenty-five days of such filing shall constitute a denial of the petition.

(2) Within forty days of the personal delivery or mailing of the final decision, the [agency] authority that rendered the final decision, regardless of whether a petition for reconsideration has been filed, may decide to reconsider the final decision.

(3) If the [agency] authority that rendered the final decision decides to reconsider [a] the final decision, pursuant to subdivision (1) or (2) of this subsection, [the agency] such authority shall proceed in a reasonable time to conduct such additional proceedings as may be necessary to render a decision modifying, affirming or reversing the final decision, provided such decision made after reconsideration shall be rendered not later than ninety days following the date on which [the agency] such authority decides to

reconsider the final decision. If [the agency] such authority fails to render such decision made after reconsideration within such ninety-day period, the original final decision shall remain the final decision in the contested case for purposes of any appeal under the provisions of section 4-183, as amended by this act.

(4) Except as otherwise provided in subdivision (3) of this subsection, [an agency] a decision made after reconsideration pursuant to this subsection shall become the final decision in the contested case in lieu of the original final decision for purposes of any appeal under the provisions of section 4-183, as amended by this act, including, but not limited to, an appeal of (A) any issue decided by the [agency] authority that rendered the final decision in its original final decision that was not the subject of any petition for reconsideration or [the agency's] such authority's decision made after reconsideration, (B) any issue as to which reconsideration was requested but not granted, and (C) any issue that was reconsidered but not modified by [the agency] such authority from the determination of such issue in the original final decision.

(b) On a showing of changed conditions, the [agency] authority that rendered the final decision may reverse or modify the final decision, at any time, at the request of any person or on [the agency's] such authority's own motion. The procedure set forth in this chapter for contested cases shall be applicable to any proceeding in which such reversal or modification of any final decision is to be considered. The party or parties who were the subject of the original final decision, or their successors, if known, and intervenors in the original contested case, shall be notified of the proceeding and shall be given the opportunity to participate in the proceeding. Any decision to reverse or modify a final decision shall make provision for the rights or privileges of any person who has been shown to have relied on such final decision.

(c) The [agency] authority that rendered the final decision may, without further proceedings, modify a final decision to correct any clerical error. A person may appeal [that] such modification under the provisions of section 4-183, as amended by this act, or, if an appeal is pending when the modification is made, may amend the appeal.

(d) For the purposes of this section and section 4-183, as amended by this act, in the case of a proposed final decision that becomes a final decision because of agency inaction, as provided in subsection (b) of section 21 of this act, the authority that rendered the final decision shall be deemed to be the agency.

Sec. 24. Section 4-183 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision may appeal to the Superior Court as provided in this section. The filing of a petition for reconsideration is not a prerequisite to the filing of such an appeal.

(b) A person may appeal a preliminary, procedural or intermediate agency action or ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling, and (2) postponement of the appeal would result in an inadequate remedy.

(c) (1) Within forty-five days after mailing of the final decision under section 4-180, as amended by this act, or, if there is no mailing, within forty-five days after personal delivery of the final decision under said section, or (2) within forty-five days after the [agency] authority that rendered the final decision denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a, as amended by this act, or (3) within forty-five days after mailing of the final decision made after reconsideration pursuant to subdivisions (3) and (4) of subsection (a) of section 4-181a, as amended by this act, or, if there is no mailing, within forty-five days after personal delivery of the final decision made after reconsideration pursuant to said subdivisions, or (4) within forty-five days after the expiration of the ninety-day period required under subdivision (3) of subsection (a) of section 4-181a, as amended by this act, if [the agency] such authority decides to reconsider the final decision and fails to render a decision made after reconsideration within such period, or (5) if a proposed final decision becomes a final decision because of agency inaction, as provided in subsection (b) of section 21 of this act, within forty-five days after the decision becomes final, whichever is applicable and is later, a person appealing as provided in this section shall serve a copy of the appeal on the agency [that rendered the final decision] at its office or at the office of the Attorney General in Hartford and file the appeal with the clerk of the superior court for the judicial district of New Britain or for the judicial district wherein the person appealing resides or, if [that] such person is not a resident of this state, with the clerk of the court for the judicial district of New Britain. An appeal of a final decision under this section shall be taken within such applicable forty-five-day period regardless of the effective date of the final decision. Within [that] such time, the person appealing shall also serve a copy of the appeal on each party listed in the final decision at the address shown in the decision, provided failure to make such service within forty-five days on parties other than the agency [that rendered the final decision] shall not deprive the court of jurisdiction over the appeal. Service of the appeal shall be made by United States mail, certified or registered, postage prepaid, return receipt requested, without the use of a state marshal or other officer, or by personal service by a proper officer or indifferent person making service in the same manner as complaints are served in ordinary civil actions. If service of the appeal is made by mail, service shall be effective upon deposit of the appeal in the mail.

(d) The person appealing, not later than fifteen days after filing the appeal, shall file or cause to be filed with the clerk of the court an affidavit, or the state marshal's return, stating the date and manner in which a copy of the appeal was served on each party and on the agency [that rendered the final decision,] and, if service was not made on a party, the reason for failure to make service. If the failure to make service causes

prejudice to any party to the appeal or to the agency, the court, after hearing, may dismiss the appeal.

(e) If service has not been made on a party, the court, on motion, shall make such orders of notice of the appeal as are reasonably calculated to notify each party not yet served.

(f) The filing of an appeal shall not, of itself, stay enforcement of [an agency] a final decision. An application for a stay may be made to the agency, to the court or to both. Filing of an application with the agency shall not preclude action by the court. A stay, if granted, shall be on appropriate terms.

(g) Within thirty days after the service of the appeal, or within such further time as may be allowed by the court, the agency shall transcribe any portion of the record that has not been transcribed and transmit to the reviewing court the original or a certified copy of the entire record of the proceeding appealed from, which shall include the [agency's] findings of fact and conclusions of law, separately stated. By stipulation of all parties to such appeal proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(h) If, before the date set for hearing on the merits of an appeal, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the [agency] authority that rendered the final decision, the court may order that the additional evidence be taken before [the agency] such authority upon conditions determined by the court. [The agency] Such authority may modify its findings and decision by reason of the additional evidence and shall file [that] such evidence and any modifications, new findings [,] or decisions with the reviewing court.

(i) [The] Except as otherwise provided by law, the appeal shall be conducted by the court without a jury and shall be confined to the record. If alleged irregularities in procedure before the [agency] presiding officer are not shown in the record or if facts necessary to establish aggrievement are not shown in the record, proof limited thereto may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(j) [The] Unless a different standard of review is provided by law, the court shall not substitute its judgment for that of the [agency] authority that rendered the final decision as to the weight of the evidence on questions of fact. The court shall affirm the final decision [of the agency] unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions [,] or decisions are: (1) In violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative [,] and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, [it] the court shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings. For the purposes of this section, a remand is a final judgment.

(k) If a particular agency action is required by law, the court, on sustaining the appeal, may render a judgment that modifies the [agency] final decision, orders the particular agency action, or orders the agency to take such action as may be necessary to effect the particular action.

(l) In all appeals taken under this section, costs may be taxed in favor of the prevailing party in the same manner, and to the same extent, that costs are allowed in judgments rendered by the Superior Court. No costs shall be taxed against the state, except as provided in section 4-184a.

(m) In any case in which a person appealing claims that [he] such person cannot pay the costs of an appeal under this section, [he] such person shall, within the time permitted for filing the appeal, file with the clerk of the court to which the appeal is to be taken an application for waiver of payment of such fees, costs and necessary expenses, including the requirements of bond, if any. The application shall conform to the requirements prescribed by rule of the judges of the Superior Court. After such hearing as the court determines is necessary, the court shall render its judgment on the application, which judgment shall contain a statement of the facts the court has found, with its conclusions thereon. The filing of the application for the waiver shall toll the time limits for the filing of an appeal until such time as a judgment on such application is rendered.

Sec. 25. Subsection (e) of section 1-82a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(e) The judge trial referee shall make public a finding of probable cause not later than five business days after any such finding. At such time the entire record of the investigation shall become public, except that the Office of State Ethics may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection [(c)] (d) of section 4-177, as amended by this act. Any such stipulation agreement or settlement shall be approved by a majority of those members present and voting.

Sec. 26. Subsection (e) of section 1-93a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(e) The judge trial referee shall make public a finding of probable cause not later than five business days after any such finding. At such time, the entire record of the investigation shall become public, except that the Office of State Ethics may postpone examination or release of such public records for a period not to exceed fourteen days for the purpose of reaching a stipulation agreement pursuant to subsection [(c)] (d) of section 4-177, as amended by this act. Any stipulation agreement or settlement entered into for a violation of this part shall be approved by a majority of its members present and voting.